tract. *Studwell v. Shapter,* 54 N. Y. 249; *Sims v. Everhardt,* 102 U. S. 300. *Contra* by statute, *Dillon v. Burnham,* 43 Kan. 77. By so doing, however, the infant will in many jurisdictions incur a liability for deceit. *Fitts v. Hall,* 9 N. H. 441; *Wallace v. Marss,* 5 Hill (N. Y.) 391. *Contra Nash v. Jewitt,* 61 Vt. 507; *Slayton v. Barry,* 175 Mass. 513. In equity, however, where the infant has falsely represented his age, or taken active steps to conceal it and has thereby induced the other party to enter into the contract, his fraud will estop him from pleading his infancy to the prejudice of the other. *Ferguson v. Bobo,* 54 Miss. 121; *Charles v. Hastedt,* 51 N. J. E. 171. But mere failure to make known his age is not such a fraud as will justify equitable interference with the common law rule. *Baker v. Stone,* 136 Mass. 405; *Davidson v. Young,* 38 Ill. 145. If goods are obtained by an infant by fraudulent representation as to his age, it is the better opinion that the other party may rescind the contract and recover the goods. *Badger v. Phinney,* 15 Mass. 359; *Neff v. Landis,* 110 Pa. 204.

MASTER AND SERVANT—INJURY TO SERVANT—ASSUMPTION OF RISK.—CENTRAL GRANARIES CO. v. AULT, 106 N. W. 418 (NEB.).—*Held,* that a servant, who from the length or character of previous service or experience, may be presumed to know the ordinary hazards attending the proper conduct of a certain business, is not entitled, as an absolute right, to the same or similar notice of dangers incident to the employment, as if he was ignorant or inexperienced in the particular work.

The facts in this case appear to preclude a negative influence from those losses establishing the master's liability when he has failed to give proper warning and notice when he knew of latent defects, *Nason v. West,* 78 Me. 253; or has furnished not reasonably safe machinery, *Matthew v. Rilston,* 156 W. S. 391; or when the master employs persons too young and inexperienced to appreciate the dangers attending the work, *Hays v. Colchester Mills,* 69 Ver. 1; or when the servant, knowing of the defects and dangers, has continued at work without objection. *Woodley v. Metropolitan R. R. Co.,* L. R. 2 Ex. D. 384. It is generally conceded in all jurisdictions that a servant assumes the ordinary risks incidental to the work. *Cooley on Torts,* Sect. 552; *Hayden v. Smithville Manf. Co.,* 29 Conn. 548. The master can not send the servant into new and dangerous work without instructions, but if the dangers are obvious and familiar, a servant can not demand instruction as to it, *Bergen v. St. Paul Ry. Co.,* 38 N. W. 814 (Minn); or if the dangers incidental are patent to every one or could have been seen by the servant, had he used reasonable care, then the master is not liable. *Welsh v. Bath Iron Works,* 98 Me. 361.

NUISANCE—ACTION FOR DAMAGES—NEGLIGENCE.—STOKES v. PENNSYLVANIA R. CO., 63 ATL. 1028 (PENN.).—*Held,* that in an action for damages occasioned by the maintenance of a nuisance, the question of negligence is not involved.

This case is strictly in line with the rules laid down in most jurisdictions. *Gas Co. v. Murphy,* 39 Pa. St. 257. As long as nuisance is not committed a person may, if he exercises due care, use his property as he sees fit. But when damage is a necessary consequence the question of negligence does not apply but the law of nuisance does. *Bohan v. Port Jervis Gas Light Co.,* 25 N. E. 246 (N. Y.). The exception to this rule is in the case of authorized

public works. In this case negligence must be alleged in order to make out a nuisance. *Transport Co. v. Chicago,* 99 U. S. 635.

RAILROADS—ACCIDENT AT CROSSING—SIGNALS—QUESTION FOR JURY.—GOODWIN ET UX. *v.* CENTRAL R. R. OF NEW JERSEY, 64 ATL. REP. 134.—Where a train ran into the hind wheel of a wagon passing over a railroad crossing, *held,* that in view of the positive testimony of the plaintiff that the statutory signals were not given, corroborated by circumstantial testimony, that question should have been submitted to the jury, notwithstanding the positive testimony of the defendant's witnesses to the contrary. Gummer, C. J., and Reed, Green, Gray and Dill, JJ., *dissenting.*

Where several witnesses testify that an engine bell was ringing as the train approached the crossing, and one witness who was in a position to hear, testifies that he did not hear the bell rung, the question whether the bell was rung must be submitted to the jury. *Atchison, T. & S. F. R. Co. v. Feehan,* 149 Ill. 202. So, where persons near the track did not hear any signals and certain members of the train crew testified that the bell was rung, it was decided that it was a question of fact for the jury. *Reed v. Chicago, St. P. and M. & O. Ry. Co.,* 74 Iowa 188; *McDuffie v. Lake Shore and M. S. Ry. Co.,* 98 Mich. 356. For, the position and situation of the witnesses, the attention they were giving, and their credibility, are questions for the jury, and hence it is proper to submit to them the ultimate fact as to whether or not the bell was ringing. *Murray v. Missouri Pac. Ry. Co.,* 101 Mo. 236. And, in such a case, where conflicting testimony is given on both sides, the determination of the question is for the jury. *Ernst v. Hudson River R. Co.,* 24 Howard Practice 97; 32 Howard Practice, 262.

RAILROAD—CROSSING ACCIDENT—CONTRIBUTORY NEGLIGENCE.—LEGANO V. NEW YORK CENT. AND H. R. R. CO.—99 N. Y. SUPP. 1103. Where, in an action for injuries to a girl five years and ten months old, who was struck by a locomotive at a crossing, it did not appear from any of the plaintiff's evidence that she looked in the direction from whence the locomotive approached, or that she exercised any care, *held* that there should have been a non-suit. Spring & Kruse, JJ., *dissenting.*

A child must exercise such care and diligence at a railway crossing as would reasonably be expected from its age and intelligence at the time. *Baltimore & O. Ry. Co. v. Breinig,* 25 Md. 378. Nor could the child recover if it failed in this, even though the jury should find negligence on the part of the defendant. *Baltimore & O. Ry. Co. v. Breinig, supra.* It has been held that a child seven years of age, could not be deemed, as a matter of law, to be *sui juris* so as to be chargeable with negligence, but that it presented a question for the jury. *Stone v. Dry Dock Ry. Co.,* 115 N. Y. 104. A child four or five years is not, as a matter of law, chargeable with contributory negligence, and barred from recovery in action brought by him, because he did not exercise reasonable care to avoid injury. *Westbrook v. Mobile & Ohio Ry. Co.,* 66 Miss. 560. The child's capacity is always the measure of his responsibility and if he has not the ability to foresee and avoid danger, negligence will never be imputed to him. *Philadelphia Ry. Co. v. Layer,* 112 Pa. St. 414.

STREET RAILROADS—INJURIES TO PEDESTRIANS—CONTRIBUTORY NEGLIGENCE—DEFECTIVE HEARING.—ADAMS V. BOSTON & N. ST. RY. CO.—78 N. E. 117